Republic v Rift Valley Sports Club (Sued Through the Board of Directors; Rotich & another (Ex parte Applicants) (Judicial Review Application E009 of 2025) [2026] KEHC 1761 (KLR) (17 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1761 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

JUDICIAL REVIEW APPLICATION E009 OF 2025

HI ONG'UDI, J

FEBRUARY 17, 2026

IN THE MATTER OF: ARTICLES 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: ORDER 53 RULES 1,2 AND 3 OF THE CIVIL PROCEDURE RULES

AND IN THE MATTER OF: THE DECISION OF THE BOARD OF DIRECTORS OF RIFT VALLEY SPORTS CLUB TO SUSPEND MEMBERSHIP OF THE EX PARTE APPLICANTS

BETWEEN

REPUBLIC ..... APPLICANT

AND

RIFT VALLEY SPORTS CLUB (SUED THROUGH THE BOARD OF DIRECTORS ..... RESPONDENT

AND

WESLEY ROTICH ..... EX PARTE APPLICANT

NICHOLAS MWANGI ..... EX PARTE APPLICANT

(IN THE MATTER OF: THE DECISION OF THE BOARD OF DIRECTORS OF RIFT VALLEY SPORTS CLUB TO SUSPEND MEMBERSHIP OF THE EX PARTE APPLICANTS)

JUDGMENT

1. In the Chamber Summons dated 5th August 2025 the Exparte applicants pray for the following orders;

    i. That this honourable court be pleased to issue judicial review orders of prohibition directed at the respondent, prohibiting it by itself, its servants, or agents from proceeding to take any disciplinary action, including suspension, expulsion or conducting investigations, against the ex parte applicants based on a complaint they made against the same board of directors of the Rift Valley Sports Club, on the grounds of breach of rules of natural justice, procedural impropriety, and bias.

    ii. That costs of this application be provided for.

2. The application is supported by the grounds on its face and the statement in support and the supporting affidavits of the ex parte applicants. They deponed that between the 4th, 16th and 22nd July 2025, they raised serious concerns in the Club's members whatsapp group, questioning a planned retreat by the board of directors to Mombasa. They questioned the financial prudence of the retreat, which was neither budgeted for nor appropriately authorised and which was to be financed from funds already committed to development projects.

3. They further deponed that in response, the board of directors took adverse action against them and by the letters dated 23rd July 2025 suspended them from the Club for 90 days, allegedly to allow for investigations into their conduct. That the board being the complainant, investigator and adjudicator cannot offer a fair process and the ongoing process violates the rules of natural justice, fairness, and impartiality. Therefore, unless this court intervenes the respondent will proceed to carry out an unlawful and unfair disciplinary process and likely impose unjust sanctions against them.

4. The application has been opposed by the respondent vide the replying affidavit of Richard Karori its chairman sworn on 25th August 2025. He averred among other things that the ex parte applicants' application is premature, bad in law and wholly defective and should be struck out. That the ex parte applicants are still members of the respondent and in the event of any complaint there are established avenues to channel the complaint, be it through the Club office, its leadership or during a members' meeting pursuant to the Club's regulations.

5. He further averred that judicial review proceedings are concerned with the decision-making process and not the merits of the decision. Further, where no decision has been made the alleged legality or propriety of the said decision-making process cannot be challenged through the judicial review process. He stated that the issues raised are not only premature for the court's intervention but also involve internal processes in a private organization that has adequate remedies. He added that the application is premised on material non-disclosure and nothing has been placed before the court to show that the ex parte applicants have suffered any prejudice whatsoever.

6. The application was canvassed by way of written submissions

Applicant's submissions

7. These were filed by Hari Gakinya & Company Advocates and are dated 8th September 2025. Counsel gave a brief introduction and background of the case and identified four issues for determination.

8. The first issue is whether the respondent's decision to suspend the applicants violated their right to fair administrative action under Article 47 of *the Constitution*. Counsel cited Article 47(1) of

the Constitution and the *Fair Administrative Action Act*, 2015, and submitted that the respondent's decision to suspend the ex parte applicants without giving them a fair hearing and without providing specific charges amounted to breach of their constitutional right. He placed reliance on the decision in Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR where the court emphasized that Article 47 is a fundamental right that cannot be ousted by private procedures.

9. The second issue is whether the respondent acted ultra vires its mandate under the Club's constitution and rules. Counsel submitted that the board being the subject of the complaints raised by the applicants, proceeded to suspend and propose to discipline them, thus their action was a clear breach of natural justice. The court's attention was drawn to the decision in Republic v Vice Chancellor Jomo Kenyatta University of Agriculture and Technology Ex-Parte Erastus Njoka [2014] eKLR where the court held that a body tainted with bias cannot lawfully exercise disciplinary, action. He also referred to R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 where the court held as follows;

> "Justice must not only be done but must be seen to be done."

10. The third issue is whether the board being the subject of the allegations could legally or ethically investigate and discipline the applicants. Counsel submitted that the respondent acted ultra vires by taking disciplinary action based onRepublic v Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR where the court held that actions taken outside statutory or constitutional powers are ultra vires and liable to be quashed.

communications made in a non-official forum not governed by Club rules. That the WhatsApp group in question was not an official communication platform recognized under the Club's constitution or governance framework. He placed reliance on the decision in

11. Lastly, on whether the order of prohibition should be granted, counsel submitted that the conduct of the board warrants the issuance of a prohibition order to restrain further disciplinary proceedings, which are tainted with bias, illegality, and procedural unfairness. He placed reliance on the decision in Republic v National Environment Management Authority [2011] eKLR where the court held that judicial review is a public law remedy for procedural irregularities and illegality, even where the body is not strictly a public body. See also; Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300.

12. In conclusion, counsel urged the court to allow the application and grant the orders sought.

Respondent's submissions

13. These were filed by Murimi, Mbago & Muchela Advocates and are dated 11th November 2025. Counsel gave a brief introduction of the case and identified three issues for determination.

14. The first issue is whether the impugned disciplinary proceedings amount to an administrative action amenable to judicial review. Counsel submitted that it is evident that the ex-parte applicants' grievance is not amenable to judicial review. That the said grievance is founded on a private contractual relationship between the parties and judicial review is only available in acts of a public nature and not private nature.

15. He further submitted that the issues raised are not only premature for the court's intervention but also involve internal processes in a private organization that has adequate remedies. He added that judicial review is now firmly established as a constitutional remedy and judicial review orders can issue against a private entity where the entity is performing a public function or exercising public authority. He

placed reliance on the decision in Republic v Kenya Cricket Association & 2 others 2006 eKLR where the court;

> " Having submitted to the code of conduct and its rules the applicant is bound by these rules and the rules were sufficient to determine his case and it being a private right cannot be enforced under Public Law. Judicial Review is not available for the reasons given above but he can seek other private law remedies."

16. The court's attention was also drawn to the decisions in: Staff Disciplinary Committee Maseno University & 2 Others v Prof. Ochong' Okello [2012] eKLR, Saisi & 7 Others v Director of Public Prosecution & 2 Others (Petition 39 & 40 of 2019 (Consolidated) [2023] eKLR, Pastoli v Kabale District Local Government Council [2008] 2 EA 300.

17. The second issue is whether the application is premature for failure to exhaust internal dispute resolution mechanisms. Counsel submitted that section 9(2) and (3) of the *Fair Administrative Action Act* requires exhaustion of internal dispute mechanisms before moving to court. Further, that rule 22 (v) of the respondent's by laws provide for suspension of members pending internal investigation on cases of indiscipline or breach of the Club laws. He referred to the Court of Appeal decision in Nyaoga v Chairman Kisii County Assembly & Others 2023 KECA 1540 KLR where it was held:

> " The doctrine of exhaustion of remedies was created by courts in order to promote an efficient justice system and autonomous administrative state. It is a principle that requires parties to exhaust all available local administrative remedies before seeking redress in a court of law on a constitutional issue. An aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand. The reason for this is to allow administrative agencies to address, and to potentially resolve the issue before escalating the same to the courts".
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> See also; Mutanga Tea and Coffee Company Ltd v Shikara Ltd & Another [2015] eKLR and William Othiambo Kamogo & 3 others v Attorney General & 4 others eKLR

18. The last issue is whether the applicants have met the threshold for orders of prohibition. Counsel submitted that an order of prohibition prevents a public body from acting unlawfully in the future and the same cannot be granted simply because an applicant fears an unfavourable decision. Further, that for prohibition to issue the applicant must demonstrate that the body is acting without or in excess of jurisdiction, or the process is illegal, irrational or procedurally improper and the applicants had not demonstrated that.

19. The court's attention was drawn to the decision in Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji & 9 Others Nairobi Civil Appeal No.266 of 1996, where the Court held as follows:

> " What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings."

20. In conclusion, he urged the court to dismiss the applicants' application since it was premature, an abuse of the court process and is premised on material of facts designed to mislead the court.

Analysis and determination

21. I have considered the application, the affidavits and the submissions by the respective parties and the issue I find falling for determination is whether the ex-parte applicants are entitled to the orders sought.

22. First and foremost, it is important to note that the nature and purpose of judicial review proceedings are that the court is primarily asked to review the lawfulness of an enactment, decision, action or failure to act in the exercise of a public or administrative function. Article 165(6) of *the Constitution* in this regard provides that this court has supervisory jurisdiction over any person, body or authority that exercises a quasi-judicial function or a function that is likely to affect a person's rights. Further, judicial review is also entrenched as a constitutional principle pursuant to the provisions of Article 47 of *the Constitution*, which provides for the right to fair administrative action.

23. Additionally, Section 7 of the *Fair Administrative Action Act* in this regard provides that any person who is aggrieved by an administrative action or decision may apply for review of the said action or decision. An administrative action or decision is defined under section 2 of the Act to mean:

    i. the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

    ii. any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

24. In light of the above provisions of the law, it is clear that while the ex-parte applicants' membership of the respondent club may be of a voluntary nature, under the *Fair Administrative Action Act*, any decision of the respondent that affects the rights or interests of its members will be amenable to judicial review. The ex-parte applicants in this regard provided evidence of the decision made by the respondent in letters dated 23rd July 2025, suspending them from the club and indicating that they engaged in a behavior which injured the reputation and well-being of the Club contrary to rule 22 of the respondent's By-laws.

25. The respondent on its part does not dispute making the said decision and it argued that the application is premature for failure to exhaust internal dispute resolution mechanisms and that the doctrine of ripeness prevents this court from entangling itself in abstract disagreement by adjudicating over such disputes. Further, that rule 22 (v) of the respondent's by laws provide for suspension of members pending internal investigation on cases of indiscipline or breach of the Club laws. In addition, that the application had been brought prematurely even before the investigation process is complete.

26. Section 9 of the *Fair Administrative Action Act* sets out the Procedure for Judicial Review. It provides as follows:

    i. Subject to subsection (2) a person who is aggrieved by an administrative action may, without unreasonable delay, apply for Judicial review of any administrative action to the High Court or to a subordinate court or upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.

    ii. The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under the Act unless the mechanisms including internal mechanisms for appeal or review and all remedied available under any other written law are first exhausted.

    iii. The High Court or a subordinate court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

iv. Notwithstanding sub-section (3), the High court or a subordinate court, may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considered such exemption to be in the interest of justice.

v. A person aggrieved by an order made in the exercise of the Judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

27. The Supreme Court in Attorney- General & 2 others v Ndii & 79 others; Dixon & 7 others (Amicus Curiae) [2022] KESC 8 (KLR) stated as follows:

> "61. The doctrine of ripeness focused on when a dispute had matured into an existing substantial controversy deserving of judicial intervention. The doctrine of ripeness prevented a party from approaching a court before that party had been subject to prejudice, or the real threat of prejudice, as a result of the legislation or conduct challenged.63. Ripeness discouraged a court from deciding an issue too early. It therefore required a litigant to wait until an action was taken against which a judicial decision could be grounded and a court was able to issue a concrete relief. That approach shielded a court from dealing with hypothetical issues that had not crystalized."

28. The Court of Appeal in Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (Civil Appeal 10 of 2015) [2015] KECA 304 (KLR) (30 October 2015) (Judgment) held as follows:

> "It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews.....The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The ex parte applicants argue that this accords with Article 159 of *the Constitution* which commands courts to encourage alternative means of dispute resolution."

29. It is however, it is trite law that in exceptional circumstances where the court finds that the exhaustion of alternative remedies requirement would not serve the values enshrined in *the Constitution* or law, it permits the suit to proceed before it. The approach to be taken by the courts when this issue is raised was suggested by the Court of Appeal in R vs National Environmental Management Authority [2011] eKLR as follows:

> ".. in determining whether an exception should be made and judicial review granted, it was necessary for the Court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it...."

30. The main considerations to be taken into account by the Court in exempting an alternative remedy are the adequacy of the alternative remedy as a matter of substance, in that it should be convenient,

expeditious and effective in practical terms, and its availability. In the case of Dawda K. Jawara vs Gambia ACmHPR 147/95-149/96, the African Commission of People and Human Rights held that:

> " A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality]...the governments assertion of non-exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case."

31. Having carefully perused the respondent's pleadings, the suspension letters issued to the ex-parte applicants and the by-laws, I note that the respondent is not certain as to when it will be able to accord the ex-parte applicants a hearing. Moreover, this court has discretion under Article 159 of *the Constitution* and section 3A of the *Civil Procedure Act* to make such orders as are necessary to achieve substantive justice, and not to give undue regard to procedural technicalities in the process. For the said reasons, the ex-parte applicants' application is therefore found to be competently before this court and they qualify to be exempted from the provisions of the *Fair Administrative Action Act* on exhaustion of internal dispute resolution mechanisms.

32. Moving to the merits of the application, it must be pointed out that illegal and unfair preliminary procedural decisions can also undermine the fairness of the entire decision-making process and the lawfulness of the eventual substantive decision, and merit intervention of this court at an early stage of the decision making. The Court of Appeal in Fleur Investments Limited v Commissioner of Domestic Taxes & Another, [2018] eKLR held as follows:

> " Whereas courts of law are enjoined to defer to specialized Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly."

33. In the present application, the obvious effect of the decision to suspend the ex-parte applicants from the respondent Club was the removal of the benefits and privileges they are entitled to as a result of their membership.Further, the respondent's by laws do not provide for a hearing to be undertaken before disciplinary action is taken on a member which is a key tenet of fair action and no evidence has been givento show that the procedure of suspending the ex parte applicants was done fairly. Rule 22 of the Respondent's by-laws only talks of an appeal at the AGM after one has been suspended and two-thirds majority vote of the members is required to confirm the actions of the directors.

34. In light of Article 47 of *the Constitution*, the respondent has a constitutional duty to act fairly and to comply with the provisions of the Fair Administrative Act in this regard. The duty to act fairly is also more onerous with respect to disciplinary proceedings that might result in the imposition of a penalty or sanctions as happened in the present case. It is evident that the respondent did not give the ex-parte applicants any opportunity to make representations on the decision to suspend them and deny them access to the Club premises. To this extent this court finds that the respondent acted unprocedurally and unfairly in making the decisions in the letters dated 23rd July 2025 addressed to the ex-parte applicants without hearing them.

35. An order of prohibition restrains a public body from acting in the manner specified in the order to restrain a threatened or impending unlawful conduct.The Court of Appeal in the case of Republic v Kenya National Examinations Council ex parte Gathenji & Others, (1997) e KLR explained the circumstances under which these orders can issue, and they are available where unlawful conduct or a breach of duty has been demonstrated on the part of a public body or official. In my view, an order for prohibition herein is not merited to the extent that if granted it may unduly prevent the respondent from discharging its functions and duties, including disciplinary action against the ex-parte applicants in future if there is good reason. The key issue is for the proper procedure and due process according to the law is to be followed by the respondent.

36. However, Section 11 (1) (a) of the Fair Administrative Act empowers this court to declare the rights of the parties in respect of any matter to which the administrative action relates. The inherent powers of this court to make such orders as may be necessary for the ends of justice to be met or to prevent abuse of the process of the court are also expressly provided by section 3A of the *Civil Procedure Act* and Article 159 of *the Constitution*.

37. In Suchan Investment Ltd v Ministry of Natural Heritage & Culture & 3 Others [2016] eKLR, the court held as follows;

> "…….Under the Fair Administrative Actions Act, there is no power for the reviewing court to substitute the decision of the administrator with its own decision. This imposes a limit to merit review under the Act. Section 11 (1) (e) and (h) of the *Fair Administrative Action Act* permits the court in a judicial review petition to set aside the administrative action or decision and or to declare the rights of parties and remit the matter for reconsideration by the administrator. The power to remit means that decision making on merits is the preserve of the administrator and not the courts."

38. In applying the above principles and having found that the decision and actions of the respondent to suspend the ex-parte applicants from its Club and deny them access to the said club was made unprocedurally and unfairly. This court is of the view that the ex-parte applicants being rightful members of the respondent, had a right to be heard and the same ought to have been accorded to them before being suspended, by the respondent.

39. For the said reason, this court hereby sets aside the respondent's decision issued vide the letters dated 23rd July 2025 suspending the ex-parte applicants from the Club. I hereby remit the dispute back to the respondent for re- hearing within 21 days. The proper procedure and due process according to the law must be employed, within the 21 days and a decision rendered. Before any hearing is conducted and a proper decision pronounced, the Exparte. Applicants shall continue to enjoy their rights as members of the respondent sports club.

40. Each party shall bear its own costs.

41. Orders accordingly.

DATED AND SIGNED THIS 20TH JANUARY, 2026 BY:

H. I. ONG'UDI

JUDGE

DELIVERED THIS 17TH FEBRUARY 2026 IN OPEN COURT AT NAKURU BY:

MOHOCHI S.M.

JUDGE